

MAR 12 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
The Use of N11 Codes and Other Abbreviated)	CC Docket No. <u>92-105</u> /
Dialing Arrangements)	
)	
Petition by the United States Department)	NSD File No. L-99-24
of Transportation for Assignment of an)	
Abbreviated Dialing Code (N11) to Access)	
Intelligent Transportation System (ITS))	
Services Nationwide)	
)	
Request by the Alliance of Information and)	NSD File No. L-98-80
Referral Systems, United Way of America,)	
United Way 211 (Atlanta, Georgia), United)	
Way of Connecticut, Florida Alliance of)	
Information and Referral Services, Inc., and)	
Texas I&R Network for Assignment of 211)	
Dialing Code)	
_____)	

PETITION FOR RECONSIDERATION**SPRINT SPECTRUM, L.P., d/b/a Sprint PCS**

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Summary

Sprint PCS seeks reconsideration or clarification of the following issues:

1. The *Third NII Order* is invalid because of the numerous violations of the Administrative Procedures Act. There are at least three APA violations:

- (a) In awarding a monopoly to the government, the Commission failed to address altogether the “user rules” alternative that Sprint PCS recommended. The failure to address these significant comments renders the *Order* arbitrary and capricious.
- (b) The Commission failed to issue a notice of proposed rulemaking and failed to publish an NPRM in the Federal Register.
- (c) The Commission failed to follow the APA’s effective date requirements.

2. The award to government of a monopoly over 511 traveler services is arbitrary and capricious and inconsistent with undisputed record evidence. The Department of Transportation never made a case for awarding the government a monopoly. The record evidence was undisputed that public funding would be a problem and that a government-controlled service would not be available in many areas. Even where funding is available, the lack of competition will, in all likelihood, result in less than optimum service quality. Although the government may provide some level of basic services, mobile carriers should be free to offer more sophisticated, uniform and widely distributed services if the market warrants.

3. The Commission should not extend rules designed for landline markets to competitive mobile markets. The fixed-landline and mobile-wireless markets are radically different. A solution adopted for one is often not suitable for the other. The Commission should stop its current practice of adopting rules for landline carriers and then as an afterthought, extend those same rules to wireless carriers.

4. The Commission should incorporate a cost-benefits analysis before adopting any new rules. If the Commission must apply, as part of the biennial review, a cost-benefits analysis in determining whether to remove existing rules, it should apply a cost-benefits analysis in determining to adopt new rules in the first place. No cost-benefits analysis was conducted here. Such an analysis should be incorporated as part of the Commission's proceedings.

5. Sprint PCS plan to implement the 211, 311 and 511 orders satisfies the Commission's requirements. Sprint PCS here describes how it intends to comply with the orders, if the Commission decides not to vacate the orders.

6. The Commission must address the current ambiguities in resolving N11 assignment and routing conflicts. State regulators derive their N11 authority only from federal law pursuant to Commission delegation. The *Third N11 Order* is internally inconsistent over the role state commissions may play in this area. State regulators, carriers, and potential N11 recipients deserve to know whether state commissions have a role in the N11 process and, if so, what that role is.

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Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code)	NSD File No. L-98-80
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PETITION FOR RECONSIDERATION

Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint PCS"), requests the Commission to reconsider its *Third N11 Order*.¹ The *Order* contains fatal procedural errors and numerous substantive flaws. Most importantly, perhaps, the *Order* contravenes what Chairman Powell has described as the "user rules" principle:

I am convinced that rules and regulations will have to increasingly yield, or perhaps more appropriately liberate consumers to use the new tools to make personalized, tailored choices about goods, services and risk they

¹ See *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, FCC 00-256, 15 FCC Rcd 16753 (July 31, 2000), summarized in, 66 Fed. Reg. 9674 (Feb. 9, 2001) ("Third N11 Order"). Sprint PCS submits this petition pursuant to Section 405 of the Communications Act. See 47 U.S.C. § 405(a); 47 C.F.R. § 1.429.

want to assume, without the one-size-fits all interference of government rules.²

Rather than empowering consumers as Sprint PCS had specifically advocated, the *Third N11 Order* adopts a “one-size-fits-all” approach by awarding government a monopoly in the provision of 511 traveler information services — under the notion that government “knows better” than the traveling public what kinds of traveler information that the traveling public should receive. This monopoly-style approach to issues has no place when applied to robust competitive markets like the commercial mobile radio services (“CMRS”) sector. While the government may have a role in providing a basic level of service to the community, this should not preclude wireless carriers from offering other more sophisticated services if the market warrants.

The flaws in the *Third N11 Order* are so serious and so numerous that the Commission should vacate the *Order* (or at least suspend the purported effective date) and start over.

I. THE *THIRD N11 ORDER* IS FACIALLY INVALID BECAUSE OF THE NUMEROUS VIOLATIONS OF THE ADMINISTRATIVE PROCEDURES ACT

The Supreme Court has ruled that “strict compliance with the APA” (Administrative Procedures Act) is required.³ The *Third N11 Order* fails to comply with the APA in numerous respects, and the *Order* is invalid as a result.

² Michael K. Powell, “Law in the Internet Age,” Remarks before the D.C. Bar Association Computer and Telecommunications Law Section and the Federal Communications Bar Association (Sept. 29, 1999).

³ *Chrysler Corp. v. Brown*, 441 U.S. 281, 312 (1979).

**A. The Commission's Failure to Address Sprint PCS' "User Rules"
Position Renders the Decision Arbitrary and Capacious**

The petition submitted by the U.S. Department of Transportation ("DOT") had two components: (1) to set aside a N11 code like 511 for traveler information services, and (2) to award the code exclusively to government so government alone can provide 511 traveler services. Sprint PCS supported the assignment of the 511 code for traveler information, but it vigorously opposed the DOT's additional request that the government be awarded a monopoly in the provision of 511 traveler services. Sprint PCS noted that "the government's interest is promoted by facilitating public access to traveler information *regardless* of the source of the information."⁴ Sprint PCS further demonstrated that awarding government a monopoly in the provision of 511 traveler services would "stifle consumer choice, retard the rapid development of effective [traveler information] systems, and in the process, undermine the Congressional goal of promoting widespread implementation of such systems."⁵

The Commission granted the DOT petition and awarded government a monopoly over the provision of 511 traveler services. In so doing, the Commission summarily rejected (in a single sentence buried in a footnote) Sprint PCS' alternative "user rules" proposal:

In this regard, we reject the contention of Sprint PCS that the N11 code assigned for use with traveler information services should be made available to entities other than governmental entities.⁶

⁴ Sprint PCS Comments, Docket No. 92-105, at 2 (July 20, 1999)(emphasis in original).

⁵ *Id.* at 2-3.

⁶ *Third N11 Order* at n.42. Appellate courts have already criticized the Commission for attempting to make decisions in footnotes. *See, e.g., McElroy Electronics v. FCC*, 990 F.2d 1351, (D.C. Cir. 1993); *RCA Global v. FCC*, 758 F.2d 733 (D.C. Cir. 1985).

The Commission made no attempt to discuss any of the points that Sprint PCS had made in its comments—which the DOT has never disputed or challenged.

Appellate courts have held repeatedly that the Administrative Procedures Act imposes on the Commission “the duty to respond to significant comments.”⁷

Notice and comment rulemaking procedures obligate the FCC to respond to all significant comments for “the opportunity to comment is meaningless unless the agency responds to all significant points raised by the public.”⁸

A significant comment is one that “raises points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed rule.”⁹ The Commission is “required to give reasoned responses to all significant comments”:

We will therefore overturn a rulemaking as arbitrary and capricious where the [agency] has failed to respond to specific challenges that are sufficiently central to its decision.¹⁰

Sprint PCS’ “user rules” proposal constituted significant comments under the APA. The Commission’s failure to address any of Sprint PCS’ arguments renders its decision arbitrary and capricious.

B. The Commission Failed to Issue a Notice of Proposed Rulemaking as the APA Requires

The 211 and 511 requirements that the Commission imposed on carriers are rules under the APA, whether or not the Commission includes the requirements in the Code of

⁷ *Alabama Power v. Costle*, 636 F.2d 323, 384 (D.C. Cir. 1979).

⁸ *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. 1987), quoting *Alabama Power v. Costle*, *supra*, 636 F.2d at 384 (D.C. Cir. 1979), and *HBO v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977).

⁹ *HBO v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977). See also *Comsat v. FCC*, 836 F.2d 623, 634 (D.C. Cir. 1988) (“The fact that Comsat’s representation, if true, would itself be dispositive of the case should suffice to make it a ‘significant’ comment demanding consideration.”).

¹⁰ *International Fabricare v. EPA*, 972 F.2d 384, 389 (D.C. Cir. 1992).

Federal Regulation. The APA defines the word ‘rule’ as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law.”¹¹ The obligations the Commission imposed in the *Third N11 Order* are mandatory in character, have general applicability, and prescribe future conduct. Indeed, the Commission itself has characterized its *Third N11 Order* as containing “final rules.”¹²

The APA requires that rules be adopted only after an agency releases a notice of proposed rulemaking (“NPRM”), with the APA further specifying that the NPRM “shall be published in the Federal Register.”¹³ The Commission has never issued a NPRM with respect to the 211 and 511 codes, nor has such a NPRM been published in the Federal Register.¹⁴ The Commission’s failure to prepare an NPRM is especially inexplicable because the U.S. Department of Transportation submitted a “Petition for Rulemaking” and specifically asked the Commission to “commence a rulemaking proceeding for the assignment of a nationwide abbreviated dialing code to state and local governments for use by advanced traveler information systems.”¹⁵

C. The Commission Failed to Comply With Other APA Requirements

The APA specifies that a new rule must be published in the Federal Register “not less than 30 days before its effective date.”¹⁶ The *Third N11 Order* did not comply with

¹¹ 5 U.S.C. § 551(4).

¹² See *Third N11 Order*, 66 Fed. Reg. 9674 (Feb. 9, 2001).

¹³ 5 U.S.C. § 553(b).

¹⁴ Instead, the Common Carrier Bureau issued public notices. See *Third N11 Order* at n.23 and n.45.

¹⁵ See Petition for Rulemaking of the United States Department of Transportation, at 21 (March 8, 1999).

¹⁶ 5 U.S.C. § 553(d).

this requirement. The *Order* was published in the Federal Register on February 9, 2001, the same date that the new rules purportedly took effect.¹⁷

The APA does recognize three exceptions to the 30-day effective date requirement, but only one exception — agency determines there is “good cause” to dispense with the minimum 30-day notice of effective date requirement — could possibly apply to this proceeding.¹⁸ However, the Commission never concluded in its *Third N11 Order* that there was “good cause” to dispense with this notice requirement, suggesting strongly that it did not intend to invoke this exception.

Nor could the Commission possibly find such “good cause” here. The “good cause” exception is designed for “situations of emergency or necessity” and is “not an ‘escape clause’ in the sense that any agency has discretion to disregard its terms.”¹⁹ The Commission can hardly claim “emergency or necessity” when it waited over six months before it even published the *Third N11 Order* in the Federal Register — and thereby delayed the effective date of the *Order* by over six months.²⁰ As one court aptly noted, an agency “cannot bootstrap [its]self into a position of emergency based on [its] own dilatory conduct.”²¹

¹⁷ See *Third N11 Order*, 66 Fed. Reg. 9674 (Feb. 9, 2001).

¹⁸ See 5 U.S.C. § 553(d)(3). The other two exceptions involve interpretative rules and rule waivers. See *id.* at § 553(d)(1) and (2).

¹⁹ *New Jersey v. EPA*, 626 F.2d 1038, 1046 (D.C. Cir. 1980), quoting S. Doc. No. 248, 79th Cong., 2d Sess. 200 (1946).

²⁰ The Commission adopted the *Third N11 Order* on July 21, 2000, released the *Order* on July 31, 2000, but the *Order* was not published in the Federal Register until February 9, 2001.

²¹ *Maine Association of Interdependent Neighborhoods v. Commissioner*, 659 F. Supp. 1309, (D. Maine 1987).

II. THE AWARD TO GOVERNMENT OF A MONOPOLY IN THE PROVISION OF 511 TRAVELER SERVICES IS ARBITRARY, CAPRICIOUS AND INCONSISTENT WITH UNDISPUTED RECORD EVIDENCE

Although the Department of Transportation asked that government be awarded a monopoly in the provision of 511 traveler information services, its petition never explained why a monopoly was appropriate or otherwise served the public interest. Sprint PCS opposed the award of such a monopoly. Among other things, it explained:

- The availability of government-controlled 511 traveler services would be spotty, as the information would be available only in those areas where the government (state, local, or regional) decided to fund the service;
- Record evidence demonstrated that public funding for a government-based service could be a problem;²²
- In areas where no government system existed, the public would be unable to obtain important traveler information, their 511 call attempts would instead be sent to a recording, and frustrated customers may stop using 511 altogether as a result;
- Even in areas where a government-funded program existed, the program would only be as good as the creativity of the involved government officials and the funding available to the agency;
- The content and quality of the service would vary dramatically from one area to another since 511 services would be provided on a local, state or regional level; and
- A government-run service would face no meaningful competition to improve the quality of its service, to introduce new technologies, or to modify the information and/or format to meet the changing needs of the public.

Indeed, one regional government candidly acknowledged that “[i]f not generously funded on a long term basis, [a government] program would only generate a public backlash as complaints of long waits, lack of information, and poor service accumulated.”²³

²² See, e.g., Letter from Him Sims, Director, Information Services, Southern California Association of Governments, to Magalie Roman Salas, FCC Secretary, Docket No. 92-105, NSD File No. L-99-24 (June 14, 1999); Letter from Matthew J. Amorello, Commissioner, MassHighway, to Magalie Roman Salas, FCC Secretary, Docket No. 92-105, NSD File No. L-99-24 (July 9, 1999).

Sprint PCS further demonstrated that the public interest would be best served by allowing each carrier to choose whether to provide the basic information generated by governmental agencies or its own more sophisticated 511 service.²⁴ Sprint PCS explained that since the wireless market is robustly competitive (with nearly 70% of Americans enjoying a choice of five or more carriers), it made no sense to require each carrier to provide the identical government-controlled information service (and no traveler service in areas where a government service is unavailable). Rather, by enabling each carrier to choose the traveler information available to its customers, 511 travel services would become a new basis for competition and consumer choice.

Because of competition, each carrier would have the incentive to offer customers the best package of traveler information available. This competition, in turn, would create competition among assemblers of traveler information, as each assembler would be incented to introduce new and more useful services and features so as to obtain additional business and visibility.²⁵ Carriers could also offer ubiquitous service of uniform quality, and a Washington D.C. customer, for example, would know in advance what information she would receive by dialing 511 while traveling in Miami or San Francisco. In short, in comparison to a government monopoly, giving carriers the flexibility to determine the

²³ Letter from Him Sims, Director, Information Services, Southern California Association of Governments, to Magalie Roman Salas, FCC Secretary, Docket No. 92-105, NSD File No. L-99-24, at 2 (June 14, 1999).

²⁴ A carrier could always use a government's traveler information service (if available in an area) if it chose not to provide its own traveler information services.

²⁵ Multiple travel service information providers are already surfacing. This positive development could easily be stifled if government takes control (is awarded a monopoly) over traveler information services.

511 traveler information made available to their customers would accelerate the rapid development of effective traveler information services.²⁶

The Department of Transportation (“DOT”) did not dispute any of the points that Sprint PCS made, but it nonetheless opposed Sprint PCS’ proposal. DOT instead argued that government “must play a primary role in making relevant information available to travelers” because it is responsible for building and maintaining highways.²⁷ Of course, there is no correlation between building a highway and having a monopoly over the provision of information concerning highway conditions, a point the DOT itself effectively conceded.²⁸ Basically, the DOT’s response was that “government knows best” what traveler information the traveling public really wants to receive.

Based on this record, the Commission — *without any discussion or analysis* — decided to award government a monopoly in the provision of 511 traveler services. The Commission’s decision is arbitrary and capricious because it is inconsistent with the undisputed record facts. There are no facts in the record supporting the Commission’s inherent finding that the government knows better than the traveling public what kind of traveler information the public wants to receive.²⁹ Sprint PCS respectfully submits the

²⁶ Sprint PCS did not address in its comments the tax savings the American public would realize if government let private industry handle traveler information services, although this factor is certainly worth consideration as part of the public interest analysis.

²⁷ DOT Reply Comments, Docket No. 92-105, at 5 (Aug. 20, 1999).

²⁸ *See id.* at 5 (“That these public agencies would administer access to the N11 number that stimulates the flow of information does not mean that they would themselves collect the data, provide the equipment, and employ the staff necessary for its dissemination.”).

²⁹ While carriers could initially select the traveler information made available to their customers, customers could soon determine for themselves the kinds of information that they want to receive — either by not making 511 calls (resulting in a loss of carrier revenues) or by switching to the services of another carrier. Unlike the government, carriers could have enormous incentives to give the traveling public the traveling information they want to receive.

time has come for the Commission to announce that a “user rules” principle will be a core component of its decisionmaking process in this and all future proceedings.

III. THE COMMISSION SHOULD NOT EXTEND RULES DESIGNED FOR LANDLINE MARKETS TO COMPETITIVE MOBILE MARKETS

With increasingly frequency, the Commission adopts rules designed for landline carriers that provide fixed services in large monopoly environments and then, almost as an afterthought, extends those rules to all carriers — including carriers providing mobile services. The landline-fixed and mobile-wireless markets are radically different, and the CMRS market has become large enough that it deserves more than footnote treatment.³⁰ The needs and expectations of customers are very different. Mobile carriers use dramatically different networks and network architectures. And perhaps most importantly, mobile carriers operate in fiercely competitive markets. There are now six national wireless carriers,³¹ and the Commission recently determined that “[o]ver 172 million people, or 69 percent of the U.S. population, live in areas with five or more telephone operators competing to offer service.”³²

The Commission has correctly recognized that “all regulation necessarily implicates costs, including administrative costs, which should not be imposed unless clearly warranted.”³³ Thus, in “wireless-only” dockets, the Commission asks first: “is there a need for Commission action?” — that is, is there a problem and can government regula-

³⁰ While there remain more customers of fixed landline service compared to mobile service, that gap is closing rapidly. *Compare* CTIA Semi-Annual Survey (97 million customers in June 2000; 111 million in March 2001), *with* Trends in Telephone Service, Table 9.2 (Dec. 2000)(146 million residential and small business fixed lines in June 2000).

³¹ They are: AT&T Wireless, Cingular, Nextel, Sprint PCS, Verizon Wireless, and VoiceStream.

³² *First CMRS Annual Competition Report to Congress*, 15 FCC Rcd 17660, 17666 (2000).

³³ *CMRS Resale Order*, 11 FCC Rcd 18455, 18463 ¶ 14 (1996).

tion remedy it?³⁴ If the Commission determines that there is a problem that government regulation could remedy, it then “weigh[s] the potential benefits of regulation against its costs.”³⁵

The Commission did not address any of these questions as applied to CMRS carriers in this docket. It did not determine that mobile customers are encountering a problem in reaching traveler or community-based services. Nor did it conclude that the benefits of the regulation would exceed the resulting costs. And finally, the Commission cannot assume that solutions used by landline fixed service providers will necessarily work for mobile wireless carriers.

IV. THE COMMISSION SHOULD INCORPORATE A COST-BENEFITS ANALYSIS BEFORE ADOPTING ANY NEW RULES

As noted above, the Commission ordinarily undertakes a cost-benefits analysis in “wireless-only” dockets before imposing new rules on wireless carriers. Sprint PCS respectfully submits that the Commission should undertake a cost-benefits analysis in every rulemaking proceeding, including proceedings handled by the Common Carrier Bureau.

The Commission is required to conduct a biennial review of its existing regulations to determine whether there are any rules that are “no longer necessary in the public interest as a result of meaningful economic competition between providers of such [telecommunications] service.”³⁶ In essence, Congress has told the Commission to apply a cost-benefits analysis to existing regulations on a scheduled basis. Since the Commission must undertake a cost-benefits analysis of existing regulations, Sprint PCS submits that

³⁴ *Second CMRS Interconnection Order*, 11 FCC Rcd 9462, 9473 ¶ 18 (1996).

³⁵ *Automatic Roaming NPRM*, WT Docket No. 00-193, FCC 00-361, at ¶ 21 (Nov. 1, 2000).

³⁶ 47 U.S.C. § 161(a)(2).

the FCC necessarily should apply a cost-benefits analysis before it adopts a rule in the first place.

The situation with wireless local number portability provides an illustration of note. In February 1996, Congress determined that landline LECs, but not wireless CMRS providers, should provide LNP.³⁷ While acknowledging that Congress “explicitly exclude[d]” CMRS carriers from providing LNP, the Commission nonetheless imposed this costly burden on CMRS carriers *only six months later*, in July 1996.³⁸ Although the Commission discussed what it perceived were the benefits of wireless LNP, it never discussed the sizable costs CMRS carriers would incur in implementing the technology — and accordingly, it could not ascertain that the benefits of number portability exceeded the costs.

Only two years ago, the Commission acknowledged that wireless LNP was not necessary to achieve its stated purpose of increasing competition:

[W]e do not perceive LNP requirements as necessary to promoting such competition. . . . Not only is CMRS competition currently growing rapidly without LNP, but in the near term, LNP does not appear to be critical to ensuring that this growth continues.³⁹

In fact, the Commission recognized that LNP is not necessary because wireless customers “easily and routinely switch from one carrier to another without the benefit of” LNP:

The record indicates that the demand for wireless number portability among CMRS consumers is currently low and that consumers are more concerned about competition in other areas such as price and service quality. In addition, the high incidence of switching between wireless carriers (popularly referred to as “churn”) indicates that many wireless customers

³⁷ See 47 U.S.C. § 251(b)(2).

³⁸ *First LNP Order*, 11 FCC Rcd 8352, 8431 ¶ 152 (1996).

³⁹ *CTIA LNP Forbearance Order*, 14 FCC Rcd 3092, 3101-02 ¶ 19 (1999).

easily and routinely switch from one carrier to another without the benefit of number portability.⁴⁰

But if number portability was not needed in 1999, on what possible basis could it be needed in 2002 when the CMRS market will be even more competitive as new entrants like Sprint PCS continue their network buildout? And from a public policy perspective, is not a carrier's finite capital better spent on expanding its network and introducing new services than on pursuing a regulatory solution to a problem that does not exist? The point is, had the Commission undertaken a basic cost-benefits analysis back in 1996, it arguably would have never extended LNP, designed for landline carriers, to wireless carriers. The Commission should not make the same mistake here; the Commission should conduct a cost-benefit analysis prior to imposing new rules on wireless carriers.

V. SPRINT PCS' PLAN TO IMPLEMENT THE 211, 311 AND 511 ORDERS SATISFIES THE COMMISSION'S REQUIREMENTS

The Commission has repeatedly acknowledged the unique challenges that wireless carriers face in implementing N11-based services given that their networks are designed to support service in large and often multistate regions.⁴¹ BellSouth raised many of these implementation issues in its reconsideration petition to the *First N11 Order*, which assigned the 311 code to non-emergency police and other government services. The Commission acknowledged that many implementation issues remain outstanding, but decided that it would be imprudent for it to specify these technical details.⁴² The Com-

⁴⁰ *Id.* at 3103 ¶ 22,

⁴¹ *See, e.g., First N11 Order*, 12 FCC Rcd 5572, 5598 ¶ 43 (1997); *Second N11 Order*, 15 FCC Rcd 15188, at ¶¶ 33-35 (Aug. 9, 2000).

⁴² *See Third N11 Order* at ¶¶ 15 and 35.

mission did confirm in the *Third N11 Order* that there is “no Commission mandate that 311 calls be provisioned in the same manner as 911 emergency calls.”⁴³ Inasmuch as wireless carriers face the identical implementation issues with 211 and 511, Sprint PCS presumes that this holding also applies to 211 and 511 calls.

Sprint PCS has studied the subject and reviewed its network capabilities and the Commission’s guidance. The Commission has decided that 311 service should be implemented within six months and that 211 and 511 should be implemented expeditiously.⁴⁴ It has further recognized that carriers can comply with its orders by reprogramming their switch software,⁴⁵ and it reaffirmed that there is no mandate that 311 calls be provided like 911 calls.⁴⁶ Given all these considerations, Sprint PCS has determined that the most feasible and expeditious way to route 211, 311 and 511 calls is through reprogramming the software in its mobile switching centers (“MSCs”).

Sprint PCS’ switches are today capable of routing N11 codes only to one destination (*e.g.*, all 211 calls will be routed to one number, all 311 calls routed to another). To minimize the disruption to its customers, Sprint PCS plans to route calls for each N11 code to the agency that will likely receive the most calls from its customers. N11 code recipients may receive calls not destined to them, so they will need to make arrangements to forward calls to the correct agency.⁴⁷ However, the Commission has already noted its

⁴³ *Third N11 Order* at ¶ 35.

⁴⁴ *See id.* at ¶¶ 15 and 36.

⁴⁵ *See, e.g., Third N11 Order* at ¶ 21; *First N11 Order*, 12 FCC Rcd at 5595 ¶ 35.

⁴⁶ *See Third N11 Order* at ¶ 35.

⁴⁷ N11 code recipients can address this matter through use of interactive voice response (“IVR”) units.

expectation that community service organizations would work cooperatively with each other to facilitate the provision of N11 services.⁴⁸

VI. THE COMMISSION MUST ADDRESS THE CURRENT AMBIGUITIES IN RESOLVING N11 ASSIGNMENT AND ROUTING CONFLICTS

The *Third N11 Order* is less than clear over the role state regulators are to play in resolving conflicts over how N11 codes should be assigned. In discussing this subject, the Commission stated that “[w]e do not at this time decide what role, if any, state commissions may play once we make a national assignment.”⁴⁹ Earlier in the *Order*, however, while discussing 511 service, the Commission stated almost in passing: “State public utilities commissions may continue to exercise jurisdiction over N11 codes to the extent necessary to ensure that carriers comply with the transportation agencies’ requests to deploy 511 expeditiously.”⁵⁰ Reconciling these two statements is not easy, and the Commission’s intent is not apparent.

State regulators, carriers, and potential N11 recipients deserve to know whether state commissions have a role in the N11 process and, if so, what that role is. Given that states derive their N11 authority *solely* from federal law,⁵¹ the Commission should be more precise over what authority states possess and do not possess in this area. The

⁴⁸ See *Third N11 Order* at ¶ 21.

⁴⁹ *Third N11 Order* at ¶ 43.

⁵⁰ *Id.* at ¶ 15.

⁵¹ Because Congress has expressly and thoroughly preempted the states over all numbering issues, see 47 U.S.C. § 251(e)(1), states no longer have independent authority under state law to act in this area. A state law that has been preempted is “void” and “without effect.” *Cipollone v. Liggett Group*, 505 U.S. 504, 515 (1992); *Southwestern Bell v. Johnson County*, 199 F.3d 1185, 1193 (10th Cir. 1999). A state law is null and void even though the state seeks only to “supplement” the federal law and even though the state law is “similar to the federal requirements.” *United States v. Locke*, 529 U.S. 89, 113 (2000) (state reporting requirements are preempted and therefore invalid).

Commission should also clarify its statement that “states will be allowed to continue to make local assignments that do not conflict with our national assignments,” given that there do not appear to be any N11 codes remaining that are available for assignment.⁵²

Sprint PCS is not opposed *per se* to having states revolve conflicting demands for N11 codes, but the Commission needs to be prepared to intervene where wireless carriers are subjected to conflicting orders of different states. Mobile services “by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.”⁵³ It is not uncommon for a mobile switch in one state to support service in other states (*e.g.*, a New York City MSC supporting service in Connecticut and New Jersey). Because its MSCs are capable of routing calls to a N11 code to only one location, Sprint PCS obviously could not comply with orders of the Connecticut, New Jersey and New York Commissions if each commission directed Sprint PCS to route N11 calls to a different destination.

VII. CONCLUSION

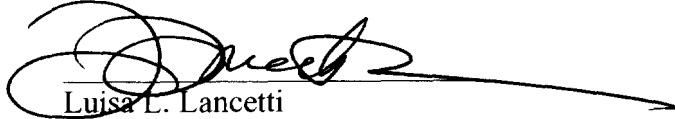
For the foregoing reasons, Sprint PCS respectfully requests that the Commission reconsider its *Third N11 Order*. The Commission should follow the statutory requirements of the Administrative Procedures Act, adopt a “user rules” principle in its public interest analysis, and incorporate a cost-benefits analysis in rulemaking proceedings. Finally, it is time that the Commission ask in common carrier proceedings whether rules

⁵² *Id.* at ¶ 43. Even if states are delegated authority to make local number assignments, they would not possess the authority to require CMRS carriers to provide any particular service. Such an order would constitute the regulation of entry that is expressly prohibited by the Communications Act. *See* 47 U.S.C. § 332(c)(3). The Commission may not delegate to the state authority that Congress has determined states may not exercise.

designed for fixed-landline markets are appropriately extended to robustly competitive mobile wireless markets.

Respectfully submitted,

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March 12, 2001

⁵³ H.R. Rep. No.103-11, 103^d Cong., 1st Sess. 260 (1993). *See also Universal Service Reconsideration Order*, 13 FCC Rcd 21252, 21270 ¶ 32 (“[M]any wireless telecommunications providers operate without regard to state boundaries.”).

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 12th day of March 2001, I served a copy of the foregoing Sprint PCS Petition for Reconsideration by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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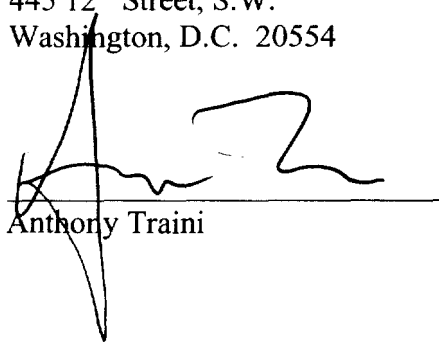
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